

law permits it. If the first view is correct that this point carries no weight then this concession is not even necessary and makes no difference when tendered except to show that the appellants were not seeking merely a procedural advantage.

For these reasons this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

**THE "PERMINA 1017";
RASU MARITIMA S.A. v.
THE "PERMINA 1017" (OWNERS) & ORS.**

[O.C.J. (Choor Singh J.) August 13, 1977]

[Singapore — Motion in Admiralty in rem No. 377 of 1976]

Shipping — Admiralty suit in rem — Claim for non-payment of charter hire — Seizure of ship — Whether defendants "beneficially owned the ship" and therefore were liable — Meaning of "beneficially owned" — High Court (Admiralty Jurisdiction) Act (Cap. 6), ss. 3(1)(h), 4(4).

The plaintiffs' claim was for non-payment of instalments under a time-charter/hire purchase agreement dated August 23, 1973 in respect of the ship "Noga". Pertamina were the hirers of the Noga. The charter was not a demise charter since the plaintiffs retained possession.

Pertamina were the demise charterers with an option to purchase the "Permina 1017" and had the possession and control of the ship. However, Pertamina were not related to one A.C.T.F.S.S.I. the owners of "Permina 1017".

The plaintiffs claimed that Pertamina were the beneficial owners of "Permina 1017" and had the ship seized.

The crux of the dispute was the meaning of the words "any...ship which...is beneficially owned as respects all the shares therein by that person (Pertamina)."

The defendants moved to set aside the writ for want of jurisdiction.

Held, allowing the defendants' application: (1) the words "beneficially owned as respects all the shares therein" clearly indicate equitable ownership and cannot by any means cover cases of possession and control without ownership;

(2) as Pertamina were not the equitable owners of the "Permina 1017", the plaintiffs had no right to seize it for non-payment of instalments by Pertamina under the said time charter/hire purchase in respect of "Noga".

Cases referred to:-

- (1) *The "Permina 108"* [1977] 1 M.L.J. 49.
- (2) *The Andrea Ursula* [1973] P. 265.
- (3) *The St. Merriel* [1963] P. 247.
- (4) *The "Pangkalan Susu/Permina 3001"* [1977] 1 M.L.J. 141, affirmed by C.A. [1977] 2 M.L.J. 129.
- (5) *The Eschersheim* [1976] 1 W.L.R. 339, 358E.
- (6) *Wood Preservation Ltd. v. Prior* [1969] 1 W.L.R. 1077 (C.A.).

ADMIRALTY IN REM.

Richard Stone Q.C. (S. Selvadurai with him) for the defendants.

Michael Thomas Q.C. (P. Selvadurai with him) for owners of "Noga".

S. Rajkumar for American Capital Transportation Fifth Ship Sales Inc.

A *P. Selvam for Credit Commercial de France.*

Choor Singh J.: The defendants moved this court to set aside the writ in these proceedings for want of jurisdiction. I allowed their application, set aside the writ and all subsequent proceedings and ordered the ship "Permina 1017" to be released. In doing so I stated that I would give reasons for my judgment later and I now proceed to do so.

B The plaintiffs' claim in this action was non-payment of instalments under a time charter/hire purchase agreement dated August 23, 1973 in respect of the ship "Noga".

Documents filed in this case established that:

- C**
- (a) Pertamina were the hirers of the "Noga" and the charter of August 23, 1973 was converted to a hire-purchase charter by rider dated July 7, 1975. The charter was not a demise charter since the plaintiffs retained possession.
 - (b) Pertamina were the demise charterers with an option to purchase the "Permina 1017" and had the possession and control of the ship.
 - (c) Pertamina were not related to American Capital Transportation Fifth Ship Sales Incorporated, the owners of "Permina 1017".

D It was agreed by both parties that the plaintiffs' claim was a claim arising out of an agreement relating to the use or hire of a ship so as to come within section 3(1)(h) of the High Court (Admiralty Jurisdiction) Act (Chapter 6).

E It was further agreed, subject to the meaning of the word "charterer", that Pertamina was the person who would be liable in an action *in personam* being the charterers of the "Noga" when the cause of action arose within the meaning of section 4(4) of the said Act.

F The words of section 4(4) of the Act that fell to be construed on this motion are:—

"(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

G In the context, and upon the facts of this case, "other" refers to a ship, other than "Noga". "At the time when the action is brought" means when the writ was issued. "As aforesaid" is a reference to subparagraph (a) so that the latter part of (b) should read in *extenso*.

H "...beneficially owned as respects all the shares therein by that person." "that person" in the context, and upon the facts of this case, is a reference to Pertamina who:

- (a) are the persons who would be liable on the claim in an action *in personam* and
- (b) were, when the cause of action arose, the charterers of the ship "Noga" in connection with which the claim arose.

I It has been decided by the Court of Appeal in Civil Appeal No. 31 of 1976 (*The "Permina 108"*)⁽¹⁾ that in order to invoke an action *in rem* against "a sister ship" under clause (b) of section 4(4) of the Act, the sister ship does not have to be owned by the same person who owns the ship in respect of which

the cause of action arose. The defendants admitted that this decision of the Court of Appeal was binding on this court as also was the definition given by the Court of Appeal to the word "charterer" but they claimed that "should the aforesaid decision of the Court of Appeal be set aside, Pertamina reserved the right to argue in any subsequent appeal in this case that there was no jurisdiction since the "Noga" and the "Permina 1017" were not in the same ownership nor were Pertamina demise charterers of the "Noga".

The crux of the dispute before me was the meaning of the words "any . . . ship which . . . is beneficially owned as respects all the shares therein by that person (Pertamina)". This was a problem of statutory construction but it was not a new one. It had been considered in three High Court cases, two in England and one in Singapore.

In the *Andrea Ursula*,⁽²⁾ "beneficially owned" was construed (in the identical corresponding provision in the English Act) as including the interest of the person (such as Pertamina) who, although not the registered or legal or equitable owner of the ship arrested, was in exclusive and full possession and control of the ship as charterers by demise and had "all the benefit and use of her which a legal or equitable owner would ordinarily have" (see at P.269G).

In the *St. Merriel*,⁽³⁾ Hewson J. held that the phrase meant true owners and not charterers by demise. He observed, at page 258:—

"... 'Beneficially owned' is not defined in this Act; and there are circumstances where a ship is owned by one person — that is true ownership — where that person is the only person with a right to sell and yet where the same ship is beneficially possessed — if I may use that expression — or beneficially controlled by some other person, such as in this case, where the ship is under charter by demise. But the words of this Act are 'as respects all the shares therein,' and I conclude that the words are there for some purpose and that that purpose is to indicate the true owner, that is, the only person with a right to sell all the shares. . . ."

In a case in this court, (The "*Pangkalan Susu/Permina 3001*")⁽⁴⁾ my brother Rajah J. agreed with the decision of Hewson J. in the *St. Merriel* and went on to say:—

"With regard to the words 'as respects all the shares therein' I accept the view of counsel for the defendants that such words suggest that a proprietorial interest is meant since shares in a ship are the means by which a ship is owned, title passing with the shares. I agreed with the decision of Hewson J., in the *St. Merriel* and adopted it, more so as he had not consulted the Convention and his decision gives effect to the ordinary meaning of the phrase.

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For the reasons I have given I was of the opinion that the 'Permina 3001' was, at the date when this action was brought, not 'beneficially owned as respects all the shares therein' (the legal and equitable owner being Ozark) by Pertamina within the meaning of section 4(4) of the Singapore Act."

Before me, counsel for the defendants contended that the words "beneficially owned as respects all the shares therein" are not wide enough to include a person who has only full possession and control of the ship but is not the legal or equitable owner of the ship arrested. He contended that the words are restricted to a person who is either the legal or the equitable owner of the ship. He relied on the decision of Hewson J. in the *St. Merriel* and submitted

A that Rajah J. was right in setting aside the writ and Warrant of Arrest in the "*Pangkalan Susu/Permina 3001*"⁽⁴⁾ case.

B Counsel for the plaintiffs contended that the words are wide enough to include the interest of a person who has only full control and possession of the ship arrested and relied on the decision of Brandon J. in the *Andrea Ursula*. He submitted that the meaning of the expression under consideration was unclear and that two meanings had been identified by Brandon J. in the *Andrea Ursula*:

- (1) equitable ownership or
- (2) the interest of the person lawfully in full possession and control with all the benefit and use which a legal or equitable owner would ordinarily have.

C Counsel maintained that in the crucial part of his reasoning, Brandon J. preferred the second meaning for two reasons:—

- D (a) trusts are rare (by implication, it would be unlikely that the draftsman would go out of his way to cater for interests arising at equity); and
- (b) there is a more practical meaning (that is, it relates to the reality of the situation and the actual benefits derived from the ship).

Counsel submitted further that:

- E (1) the *Andrea Ursula*, a decision of an experienced Admiralty judge, has not since 1970 been criticised by any English court and has been acted upon by practitioners as a correct decision, at least until very recently. It was referred to without disapproval by Sir Gordon Willmer in the Court of Appeal in the *Eschersheim*.⁽⁵⁾

- F (2) The *St. Merriel*, is less persuasive because (i) the construction preferred by Brandon J. does not appear to have loomed large in the argument; (ii) Hewson J. did not have in mind the earlier Admiralty case law referred to by Brandon J. in which the interest of a charterer by demise had been recognised as ownership of a kind.

- G (3) The wider meaning preferred by Brandon J. is fully in accord with the meaning given to "beneficial ownership" in revenue cases, the only other statutory context in which these words appear. See *Wood Preservation Ltd. v. Prior*.⁽⁶⁾

- H (4) It is consonant with the spirit of the Act that when persons trade vessels in their exclusive possession and control for their own profit and benefit, those same vessels should be available for arrest to answer for the debts and liabilities of those same persons. Otherwise, the value of the Admiralty jurisdiction *in rem* is diminished. It is not easy for a creditor to know whether the debtor is the legal owner of the ship or is no more than a charterer by demise.

I I have set out all the submissions of counsel for the plaintiffs. I was unable to accept any of them. First of all I do not regard the words "beneficially owned as respects all the shares therein" as being capable of more than one meaning. In my judgment they can only mean ownership in the ordinary sense

of the word. The reference to shares is critical. Possession and control has nothing to do with shares as one can have possession and full control of a ship without any shares therein. Beneficial use must be distinguished from beneficial ownership. A demise charterer can have the beneficial use of the ship but he does not have the beneficial ownership as respects all the shares in the ship. I have no doubt at all that the words "beneficially owned as respects all the shares therein" clearly indicate equitable ownership and cannot by any means cover cases of possession and control without ownership. As Pertamina were not the equitable owners of the "Permina 1017", the plaintiffs had no right to seize it for non-payment of instalments by Pertamina under a time charter/hire purchase agreement in respect of "Noga". The defendants' application was therefore allowed.

Application allowed.

Solicitors: *Selvadurai & Emmanuel; Rodyk & Davidson; Donaldson & Burkinshaw; Drew & Napier.*

A MALAYSIAN REPORTS

LOH KOOI CHOON v. GOVERNMENT OF MALAYSIA

[F.C. (Ali, Raja Azlan Shah and Wan Suleiman FJJ.)
June 7, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 157 of 1975]

Constitutional Law — Fundamental liberties — Liberty of person — Amendment of Constitution with retrospective effect — Whether valid — Restrictive Residence Enactment (F.M.S. Cap. 39) — Federal Constitution, Articles 5, 7 and 159.

In this case the appellant had been arrested and detained under a warrant issued under the provisions of the Restricted Residence Enactment. The appellant had not been produced before a Magistrate within twenty-four hours of his arrest. He claimed damages but it was held that no action could be brought against the police officer as he was acting in compliance with a warrant issued by a competent authority. The appellant appealed but before the appeal was heard the Federal Constitution was amended by Act A354/76 which provided in effect that Article 5(4) of the Constitution shall not apply to the arrest or detention of any person under the existing law relating to restricted residence and that this amendment shall have effect from Merdeka Day. It was argued that the amendment was unconstitutional.

Held: (1) Parliament can alter the entrenched provisions of Article 5(4) to remove the provision relating to the production before a Magistrate of any arrested person under the Restricted Residence Enactment as long as the process of constitutional amendment as laid down in Article 159(3) is complied with. When that is done it becomes an integral part of the Constitution; it is the supreme law, and accordingly it cannot be said to be at variance with itself;

(2) if Parliament retrospectively affects vested rights or pending proceedings, then it would be the duty of an appellate court to apply the law prevailing on the date of appeal before it. Subject to the constitutional limitation of Article 7 of the Constitution, to wit, protection against retrospective criminal laws and repeated trials, Parliament would be within the ambit of its competence if it deems fit to legislate retrospectively.

[**Editorial Note:** In view of the demise of Ali F.J. the court asked both counsel for the parties under section 42 of the Courts of Judicature Act, 1964 whether they consented to accept judgments by the remaining judges of the court, it being understood that if there was no majority opinion the proceedings should be re-heard. Both counsel consented.]

Cases referred to:-

- (1) *Vacher & Sons Ltd. v. London Society of Compositors* [1913] A.C. 107, 118.
- (2) *Henry v. Geopresco International Ltd.* [1975] 2 All E.R. 702, 718.
- (3) *Assa Singh v. Mentri Besar, Johore* [1969] 2 M.L.J. 30.
- (4) *I.C. Golak Nath & Ors. v. State of Punjab & Ors.* [1967] 2 S.C.R. 762.
- (5) *Sri Sankari Prasad Singh Deo v. Union of India and State of Bihar* [1952] S.C.R. 89.
- (6) *Sajjan Singh v. State of Rajasthan* [1965] 1 S.C.R. 933.
- (7) *Kasavananda Bharati v. State of Kerala* [1973] S.C.R. Supp. 1.
- (8) *Adegbenro v. Akintola & Anor.* [1963] 3 All E.R. 544, 551.
- (9) *Hinds v. The Queen* [1976] 2 W.L.R. 366, 373.
- (10) *In re Pulborough School Board, Bourke v. Nutt* [1894] 1 Q.B. 725, 737.
- (11) *Barber v. Pigden* [1937] 1 K.B. 664, 673.
- (12) *Letang v. Cooper* [1964] 2 All E.R. 929, 933.
- (13) *Latikiro of Buganda v. A.G.* [1960] 3 All E.R. 849, 851.